

## Ombudsman's Determination

Applicant	Mr Y
Scheme	DS Smith Group Pension Scheme ( <b>the Scheme</b> )
Respondents	DS Smith Group Pension Trustee Limited ( <b>the Trustee</b> ) DS Smith Business Services Limited ( <b>the Employer</b> )

## Outcome

1. I do not uphold Mr Y's complaint and no further action is required by the Trustee or the Employer.

## Complaint summary

2. Mr Y complained that he made irreversible financial commitments based on information provided by the Trustee that overstated his pension entitlement under the Scheme for several years, causing him financial detriment.

## Background information, including submissions from the parties

3. On 3 December 1983, Mr Y commenced employment with the Employer.
4. On 1 July 2002, Mr Y joined the Scheme with a normal retirement date (**NRD**) of 1 September 2025, at age 65.
5. On 30 April 2011, the Scheme, which is a final salary arrangement, closed to future accrual and Mr Y became a deferred member.
6. In August 2011, Mr Y was made redundant by the Employer.
7. On 9 November 2011, the Trustee sent Mr Y a closure statement (**the closure statement**), which quoted his benefit entitlement upon leaving the Scheme as 'Total deferred pension at [the] date of exit £19,507.50' a year.
8. In April 2012, Mr Y received a benefit statement, (**the 2012 Statement**) which included a note informing him that:-

"This statement sets out the pension payable at [your] normal retirement date (NRD) that was due to you [from the Scheme] when you left service. It also shows the current estimate of your expected pension at NRD..."

9. The annual benefits quoted following this note were:-

Total pension at date of leaving	£28,734.42
Pension payable at NRD...	£28,734.42

10. On 7 February 2013, the Trustee sent Mr Y a retirement quotation (**the February 2013 Quotation**) showing benefits payable from 1 September 2015, including an annual pension of £18,150.96 with no tax-free lump sum.

11. A note included in the retirement quotation informed Mr Y that:-

“The figures provided...are for illustration purposes only and are not guaranteed to apply upon retirement. The pension figures provided are estimates of your possible pension benefits as at your assumed date of retirement...In any case, your pension benefits will be calculated in accordance with [the Scheme Rules].”

12. On 21 February 2013, the Trustee sent Mr Y another retirement quotation (**the Second February 2013 Quotation**), showing benefits payable from 1 September 2020 of £26,760.72 a year with no tax-free lump sum.

13. The note previously contained in the February 2013 Quotation, see paragraph 13 above, was repeated in this correspondence.

14. In 2013, the Trustee sent Mr Y a benefit statement (**the 2013 Statement**), quoting annual benefits of:-

Total pension at date of leaving	£28,734.42
Estimated total pension at 5 April 2013...	£30,779.00

15. In 2014, the Trustee sent Mr Y a further benefit statement (**the 2014 Statement**) and it quoted annual benefits of:-

Total pension at date of leaving	£28,734.42
Estimated pension at 30 April 2014...	£31,606.00

16. On 15 December 2014, the Trustee sent Mr Y a retirement quotation showing benefits payable from 1 September 2015 quoting an annual pension estimate of £18,180.60 with no tax-free lump sum.

17. In 2016, the Trustee sent Mr Y another benefit statement (**the 2016 Statement**), quoting annual benefits of:-

Total pension at date of leaving	£28,734.42
Estimated pension at 30 April 2016...	£31,953.36

18. On 3 May 2016, the Trustee sent Mr Y a retirement quotation (**the May 2016 Quotation**) which included the same note that was also contained in the February 2013 Quotation and the Second February 2013 Quotation, which stated:-

“Please note that the pension figures [provided] are for illustration purposes only and are not guaranteed to apply in the future...”

19. The benefits quoted in the May 2016 Quotation included an estimated annual pension of £18,679.44 with no tax-free lump sum from 1 June 2016.
20. In October 2016, Mr Y contacted the Trustee to ask for a cash equivalent transfer value (**CETV**) quotation.
21. On 4 January 2017, Mr Y telephoned the Trustee to chase the CETV quotation and was told that his pension entitlement had been overstated in the benefit statements previously provided. So, revised figures would be sent to him.
22. On 6 January 2017, the Trustee wrote to Mr Y and said:-
  - An error had been identified in his computer record, meaning that an annual pension of £28,734.42 had been recorded, even though the closure statement correctly quoted an annual deferred pension of £19,507.50 in 2011.
  - Consequently, the retirement quotations and benefit statements sent to him between 2012 and 2016, had overstated his pension entitlement based on the incorrect higher figure.
  - Since becoming a deferred member, his pension entitlement had increased in accordance with inflation, subject to limitations.
  - Consequently, his correct annual pension entitlement on 1 April 2016 was £21,673.20.
  - His computer record would be updated to reflect his correct pension entitlement and a CETV quotation sent to him based on the Scheme actuary's calculations.
23. On 12 January 2017, the Trustee sent Mr Y a retirement quotation for benefits payable from 1 February 2017, including a pension with no tax-free lump sum figure of £12,787.56 a year.
24. On 13 January 2017, the Trustee sent Mr Y a CETV quotation of £452,934, guaranteed until 12 April 2017.
25. On 13 February 2017, Mr Y complained to the Trustee under the Scheme's Internal Dispute Resolution Procedure (**IDRP**) and said:-
  - From April 2012 onwards he had received a number of retirement quotations and benefit statements that he relied on in making some significant financial decisions.
  - Having requested a CETV quotation in October 2016, he contacted the Trustee for an update on 4 January 2017 and was told that an error had been made in the figures previously provided for almost five years.

- It was not until 12 January 2017 that he received revised figures, showing that the benefits quoted had been overstated by £9,226.92, based on the correct figures provided in the closure statement.
- He had planned to go into semi-retirement at age 60 but the revised figures would not now allow him to do so.
- He moved house in 2013 and reduced his pension contributions having relied on the misinformation received in 2012 when making those decisions.
- On the basis of the overstated benefits he had offered financial assistance to his daughters in purchasing their first house, and this would need to be honoured.
- He took a lower paid job in 2014, based on the assumption that his retirement benefits would be higher in 2020 than the revised figures would allow.
- The financial loss he has incurred as a consequence of the misinformation provided by the Trustee includes the £20,000 cost of moving house in 2013.
- He also lost tax relief on employee contributions of 9% of his salary that he would otherwise have continued to pay and benefit from matching employer contributions amounting to a total of around £10,000.
- He is approximately "£175,000 worse off" based on retirement at age 60 and assuming he lives to age 85 when the benefits originally quoted are compared to the revised figures.

26. On 28 March 2017, the Trustee wrote to Mr Y in response and said:-

- After the Scheme closed to future accrual on 30 April 2011, the closure statement was sent to Mr Y, quoting a figure of £19,507.50 a year as his deferred pension.
- It was subsequently discovered that an incorrect annual pension of £28,734.42 was noted in Mr Y's computer record. This amount overstated his pension by £9,226.92.
- Consequently, a number of retirement quotations and benefit statements sent to Mr Y were incorrectly based on the overstated figure.
- Following Mr Y's request for a CETV quotation in October 2016, the error was identified, and his pension entitlement was amended to £19,507.50 a year at the date the Scheme closed to future accrual.
- Having considered Mr Y's complaint of financial detriment, caused by the misinformation provided, it was concluded that reinstatement of Mr Y's overstated pension would not be appropriate.
- The Trustee can only pay Mr Y's pension in accordance with the Scheme Rules, which provide no discretion to enhance the benefits payable beyond that entitlement.

- It may be possible for Mr Y to pay backdated employee contributions and receive backdated employer contributions into the Employer's alternative Saver Plus pension scheme.
- An award of £500 to Mr Y in recognition of the distress and inconvenience caused to him was appropriate.

### **Mr Y's position**

27. Mr Y said:-

- He made irreversible financial commitments based on the retirement quotations and benefit statements that overstated his pension entitlement under the Scheme. This has caused him financial detriment as he had planned to retire at age 60 in 2020, due to his medical condition, but the revised figures quoted by the Trustee meant that this was not possible. He also purchased a new house in 2013, on the understanding that it would be affordable based on a retirement quotation he had received at the time. This is not now the case, and he will need to move house again at a cost of over £20,000.
- Having been made redundant by the Employer in 2011 when his salary was over £75,000 a year, he was re-employed in 2014 on a lower salary of around £55,000 annually. This meant that he had to reduce the level of his contributions.
- He accepted a new job based on the pension he had expected to receive from age 60, which was based on the misleading information provided by the Trustee.
- Before 2011, he had been making the maximum employee contributions of 9% of his salary to the Saver Plus Scheme, and would have continued to do so, had he not received the misinformation. The resulting loss of tax relief on his employee contributions, in addition to unpaid contributions from the Employer, was in excess of £10,000.
- An award of £50,000 in recognition of the financial detriment and the distress and inconvenience he had suffered would be appropriate.

### **The Trustee's position**

28. The Trustee said:-

- Mr Y is only allowed to receive his correct pension entitlement under the Scheme Rules.
- Mr Y has provided no evidence that he would not have purchased a new house, but for the misinformation provided.
- Mr Y's purchase of a new home is not necessarily irreversible, and he could continue to work longer than originally planned if necessary to make it affordable.

- Mr Y accepted a job on a lower salary in 2014. However, he had previously been made redundant by the Employer in 2011 and received a severance payment. So, Mr Y would not have been solely reliant on the benefit statements in deciding to take a lower paid job three years after leaving the Employer.
- Mr Y's decision to accept a lower paid job could have contributed to him making reduced contributions to the Saver Plus Scheme and he could have made backdated contributions to the Saver Plus Scheme, with permission from the Employer.
- An increased award to Mr Y of £1,000 in recognition of the distress and inconvenience caused to him was appropriate.

## **Adjudicator's Opinion**

29. Mr Y's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee or the Employer. The Adjudicator's findings are summarised below:-

- The Trustee has acknowledged that following the Scheme's closure to future accrual in 2011, Mr Y's records were incorrectly updated to reflect higher benefits than he was entitled to receive, resulting in overstated retirement quotations and benefit statements being provided to him for several years. In the Adjudicator's opinion these errors amounted to maladministration. However, on 9 November 2011, the Trustee provided Mr Y with the correct information in the closure statement which quoted his benefit entitlement upon leaving the Scheme as 'Total deferred pension at [the] date of exit £19,507.50' a year.
- In the Adjudicator's view, that figure was significantly lower than the annual 'Total pension at date of leaving' of £28,734.42 that was subsequently quoted in the 2012 Statement. This rapid increase in value should have alerted Mr Y that an error had occurred and prompted him to immediately contact the Trustee. Had he done so, the error would likely have been identified at that point and Mr Y would not have continued to receive incorrect retirement quotations and benefit statements until 2016, based on the £28,734.42 figure. The Adjudicator also noted that all the statements and quotations that Mr Y received included a disclaimer to the effect that the quoted figures were not guaranteed.
- In the Adjudicator's opinion it was unreasonable for Mr Y to rely on the misinformation that he received from the Trustee between 2012 and 2016 in making the financial decisions that he has referred to. However, Mr Y has been offered the opportunity to make backdated contributions into the Saver Plus Scheme to offset some of his perceived shortfall in pension benefits.
- In the Adjudicator's view the maladministration identified would have caused Mr Y serious distress and inconvenience. An award of £1,000 is in keeping with the Ombudsman's guidance for serious non-financial injustice. So, the Trustee's

award of £1,000 to Mr Y was sufficient recognition of the distress and inconvenience he has suffered.

30. The Trustee and the Employer accepted the Adjudicator's Opinion, Mr Y did not, and the complaint was passed to me to consider. Mr Y provided his further comments, which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Mr Y.

31. Mr Y's additional comments

- At the time of his redundancy in August 2011, he was aware that the Scheme had been closed to future accrual in April 2011.
- He has no recollection of ever receiving the related closure statement, so he was unable to compare the figures quoted in it to the incorrect retirement quotations and benefit statements that he received. His address that the Trustee has said the closure statement was sent to was correct at the time.
- The incorrect benefit statements and retirement quotations overstated his benefit entitlement by around 50%. The disclaimer contained within those documents should only allow a small margin for error.
- He relied on the misinformation he received from the Trustee in deciding to take a job on a lower salary.
- The fact that he requested retirement quotations at certain times shows that he was using the information provided to make important financial decisions. So, it was not unreasonable to rely on the information provided in response to those various enquiries.
- He has insufficient funds to pay backdated pension contributions and mitigate the lost benefits he had expected to receive based on the incorrect information provided by the Trustee.

32. The Trustee confirmed that there was no further correspondence or communication from Mr Y after its letter of 28 March 2017.

### **Ombudsman's decision**

33. Mr Y complained that he made irreversible financial commitments based on information provided by the Trustee that overstated his pension entitlement under the Scheme for several years, causing him financial detriment.

34. Mr Y said that at the time of his redundancy in August 2011 he was aware that the Scheme had closed to future accrual in April 2011, but he has no recollection of ever receiving the related closure statement. On that basis Mr Y contends that he was unable to compare the figures quoted in the closure statement to the incorrect retirement quotations and benefit statements that he received.

35. The Trustee's procedure in 2011, when Mr Y was made redundant, was to send a closure statement to members. Mr Y has confirmed that the address used by the Trustee when sending the closure statement was correct. I find, on the balance of probability, that the closure statement was sent to Mr Y. However, once the closure statement went into the postal system the Trustee had no further control over whether the letter was delivered.
36. Given that the closure statement was mentioned in the Trustee's letters dated 6 January 2017 and 28 March 2017, and by Mr Y himself in his letter of 13 February 2017, it would be reasonable to expect that Mr Y would have highlighted to the Trustee that he hadn't received the closure statement when the error came to light. I find that on the balance of probabilities Mr Y did in fact receive the closure statement in 2011. It is with the benefit of hindsight, having received the Adjudicator's Opinion, that Mr Y now says he did not receive the closure statement and so had no reason to believe the later statements were incorrect. Accordingly, I do not consider Mr Y's argument that he relied on the incorrect information to his detriment to be reasonable.
37. Nonetheless, the provision of incorrect information did amount to maladministration on the part of the Trustee, and I acknowledge that the matter will have caused Mr Y distress and inconvenience. I find that the Trustee's offer of £1,000 to Mr Y is sufficient recognition of the serious distress and inconvenience which Mr Y has suffered. Mr Y should contact the Trustee if he wishes to accept its offer.
38. I do not uphold Mr Y's complaint.

**Anthony Arter**

Pensions Ombudsman  
23 May 2022